SUPREME COURT OF THE UNITED STATES.

No. 836.

THE NEW ORLEANS CANAL AND BANKING COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a To the Honorable Thomas C. Manning, Chief Justice of the Supreme Court of the State of Louisiana.

This petition of the New Orleans Canal and Banking Co. respectfully represents, that it is advised there is error to its prejudice in the judgment of the honorable the Supreme Court of the State of Louisiana rendered on the 4th day of December, 1877, in a certain cause wherein the City of New Orleans was plaintiff and the New Orleans Canal and Banking Company, your petitioner, was defendant. That said cause involved in its decision the construction of the laws of the United States, and especially of sections 3,701 and 5,413 of the Revised Statutes; that your petitioners claimed to be exempt from a tax on its capital imposed by the city of New Orleans by reason of such laws and statutes, and the judgment was against the exemption claimed.

Wherefore petitioner prays your honor to allow and grant it a writ of error to the Supreme Court of the United States, to ope-
b rate as a supersedeas, and to be returnable according to law, upon petitioner's giving bond for an amount to be fixed by your honor, in favor of the city of New Orleans, and conditioned according to law.

JNO. & W. S. FINNEY,
Attorneys for the New Orleans Canal & Banking Company.

Let a writ of error issue as herein prayed for, to operate as a supersedeas, upon the giving of a bond by the New Orleans Canal and Banking Company, plaintiff in error, in favor of the city of New Orleans, in the sum of nineteen thousand dollars, with good and solvent security, and conditioned according to law; said writ to be returnable on the 2d Monday of October, 1878.

December 12, 1877. TH. C. MANNING,
Chief Justice of Supreme Court of La.

(Endorsed:) No. 6,359. Supreme Court. City of New Orleans vs. N. O. Canal & Banking Co. Petition for writ of error. Filed Dec. 12th, 1877. Frank Wall, d'y clerk.

c UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Supreme Court of the State of Louisiana, holding sessions in New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, being the highest court of law or equity of the said state, or some of you, in which a decision could be had in the said suit between the City of New Orleans, plaintiff, and the New Orleans Canal and Banking Company, defendant, a manifest error hath happened, to the great

damage of the said New Orleans Canal and Banking Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 11th day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Endorsed:) United States Circuit Court. No. 6,359. New Orleans Canal and Banking Company, pl'tf in error, versus City of New Orleans, def't in error. Writ of error. Filed Dec. 12th, 1877. Frank Wall, d'y clerk.

d THE UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, to be served on its mayor, Edward Pilsbury, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Louisiana in a certain suit, wherein the city of New Orleans is plaintiff and the New Orleans Canal & Banking Company is defendant, to show cause, if any there be, why the judgment rendered against the said New Orleans Canal & Banking Company as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12 day of Dec, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] TH. C. MANNING,
Chief Justice.

(Endorsed:) Supreme Court of Louisiana. No. 6,359. City of New Orleans vs. New Orleans Canal & Banking Co. Citation. Sheriff's return.

Rec'd Dec. 15, '77, and on the same day, month and year, I served a copy of the within citation on Edward Pilsbury, mayor of the city of New Orleans, by leaving the same at the office of the mayor, room No. 9, city hall, in the hands of his private secretary, E. L. Borrer; said Edward Pilsbury being absent at time of said service. Returned same day.

Shff. fees 50 cts.

H. C. THOMAS,
Dy. Shff.

Henry C. Thomas being duly sworn, deposes and says that all the facts and statements contained in the foregoing return are true and correct.

HENRY C. THOMAS.

Sworn to and subscribed before me, this 28 Jan'y, 1878.

T. McC. HYMAN,
Dy. Clerk Supreme Court of La.

1 *City of New Orleans.* *Tax of* 1876. *No. 928 Bi.*

Received, ———, 187—, of N. O. Canal & Banking Comp'y, ——— dollars for tax as described below.

Assessment.			For What Purpose.	Rates of tax per $100.	Amount.
Real estate	$		Interest on bonded debt		
Personal property. Income			City expenditures		
Furniture			Metropolitan police		
Horses, cows, and carriages			New Orleans city park		
Stocks in vessels and corporations			Public schools		
Merchandise, capital, and money at interest	700,000 00				
Total taxable property		$10,500 00	Total tax	1½ ℔ ct.	$10,500 00

(Sg'd) WM. J. COMERFORD,
For Administrator of Public Accounts.

———— ————,
For Administrator of Finance.

Description of Real Estate.

Assessment District.	No. of Square.	Where Situated.	Amount.
5	171	[The streets between which the property lies are here given, the first-named being that on which it fronts. When one or more streets are underscored corner property facing these streets is denoted.] Gravier and Camp.	

(Across face:) No. 402. City tax series 1876. Superior district court. Filed May 26th, 1876. (Sgd.) J. Burk, clerk.

2 *Motion for Default.*

Extract from the minutes, June 6th, 1876.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY.

On motion of B. F. Jonas, city attorney, and Samuel P. Blanc, assistant city attorney, and upon producing due proof of publication in the official journal for the requisite number of times, and during the period required by law, on the filing of the tax bill for the year 1876, upon which the defendant in the above cause is delinquent, and upon other and satisfactory proof of a full compliance with the law, and the defendant having failed to make answer or otherwise to appear against claims of the city, it is ordered, adjudged, and decreed that judgment by default be entered against defendant.

Note of Evidence, filed June 9th, 1876.

State of Louisiana.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. No.

Before Superior District for the Parish of Orleans.

3 Note of evidence offered by the city of New Orleans on the 9th day of June, 1876, upon taking default in the above-entitled suit, and filed ———.

1st. Ordinance No. 3,349, administrative series, being an ordinance entitled "*An ordinance* adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1876."

2nd. Ordinance No. 3,358, A. S., being "An ordinance adopting an estimate of the expenditures of the city of New Orleans for the year 1876."

3rd. Ordinance No. 3,367, A. S., being an ordinance entitled "An ordinance levying city taxes for the year 1876."

4th. Ordinance No. 3,369, A. S., entitled "An ordinance relating to signing tax-bills and licenses for the year 1876."

5th. Assessment-roll made in 1875 for the tax of 1876, assessment district, together with the certificate of the assessor and the certificate attached to said roll.

6th. The tax-bill due by the defendant.

7th. Four copies of New Orleans Republican of dates April 21st, May 2nd, May 11th, and May 20th, 1876, containing the delinquent tax-list.

8th. Affidavit of A. P. Harrison, chief clerk department
4 of finance.

Ordinance No. 3,349.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 4th*, 1876.

(No. 3,349, Administration Series.)

An ordinance adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1876.

Be it ordained by the council of the city of New Orleans, that the following estimate of receipts or revenues of the city of New Orleans for the year 1876 be and the same is hereby adopted:

Tax one and one-half per cent. on the valuation of real and personal property, as per assessment on a total of	$119,045,515	1,785,682 72
Licenses	$350,000	
Less outstanding metropolitan police warrants	80,000	270,000 00
Market revenues	220,000	
Less due Louisiana National Bank	150,000	70,000 00
Waterworks		125,000 00
Wharves and landings from lessees		30,000 00
Brogh't over.		
Law charges		30,000 00
Fines & fees		10,000 00
City railroads, bonus		5,000 00
Cemeteries		1,500 00
Ground rents		4,500 00
Bills receivable		10,000 00
5 Pound fees		500 00
Sugar-shed Company		1,000 00
Street assessments		1,000 00
Miscellaneous		5,000 00
Total		$2,349,182 72
Outstanding taxes and interest estimated collectible	$2,000,000	
Less unpaid ordinances	900,000	1,100,000 00
Total		$3,449,182 72

Adopted by the council of the city of New Orleans, January 4th, 1876, veto of the mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Burke, Landry, McCarthy, Pilsbury—6.

Nay: Bouny—1.

A true copy.

(Sigd.) J. H. HARDY, *Secty.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January* 18, 1876.

No. 3,358, Administration Series.

An ordinance adopting an estimate of expenditures of the city of New Orleans for the year 1876.

Be it ordained by the council of the city of New Orleans, that the following estimate of expenditures (including police and schools) for the year 1876, be and the same is hereby adopted:

6	Department of Improvements—		
	Streets, wages, etc.....	206,600 00	
	Streets, repairs, etc.....	68,625 00	
	Streets, bridges, crossings, and wings..	80,025 00	
	Drainage machines.....	40,500 00	
	Wharves and landings.....	7,800 00	
	Administrator's office—salaries and expenses	4,500 00	408,050 00
	Surveyor's office—salaries and office expenses	18,520 00	
	Drainage, expenses, etc.....	5,120 00	23,640 00
	Continued.		
	Department of Waterworks and Public Buildings—		
	Waterworks—pipes, machinery, etc..	30,000 00	
	Waterworks—salaries and wages.....	40,000 00	
	Aministrator's office—salaries and expenses	4,050 00	
	Insane asylum—provisions, rent, salaries, etc.....	19,150 00	
	Court-houses—repairs and salary of keeper.....	5,400 00	
	Market-houses—repairs.....	2,500 00	
	School-houses.....	5,000 00	
	Public buildings (other than enumerated).....	6,000 00	
	Small-pox hospital.....	9,000 00	
	Visiting physicians.....	3,000 00	
	Public sinks.....	4,500 00	
	Home of aged and infirm.....	5,000 00	
7	City Hall Building—repairs and office expenses	2,000 00	135,600 00
	Department of Police—		
	Administrator's office—salaries and expenses	4,480 00	
	Public squares—salaries and wages...	7,200 00	
	Continued.		
	Public Pounds—salaries and rents....	5,000 00	

Work-house—provisions, salaries, etc.	14,150 00	
Boys' House of Refuge—provisions, salaries, etc	19,020 00	
Costs of removal of sick and dead, etc.	2,000 00	52,450 00
Department of Commerce—		
Salaries and wages	25,300 00	
Office expenses	500 00	25,800 00
Department of Finance—		
Salaries	20,000 00	
Office expenses	2,000 00	22,000 00
Department of Public Accounts—		
Salaries	13,000 00	
Office expenses	2,000 00	15,000 00
Department of Assessments—		
Salaries	5,100 00	
Office expenses	400 00	
Assessment-rolls (state)	16,000 00	21,500 00
Continued.		
Mayor's Office—		
Salaries	5,400 00	
Office expenses	860 00	6,500 00
8 City Hall Building—		
Salaries of librarian, keeper of archives, janitors and porters		5,000 00
City Council—		
Salary of secretary and assistant	2,700 00	
Stationery, etc	300 00	3,000 00
Printing—		
Proceedings of council and promulgation of ordinances	4,500 00	
Tax-bills, reports, and advertisements,	6,000 00	10,500 00
Tax-bills, etc.—		
Tax mortgages, registers, salaries, and stationery	4,500 00	
Printing tax ledgers, bills	1,500 00	
Making tax-bills	6,000 00	12,000 00
City Attorney—		
Continued.		
Salaries	10,400 00	
Office expenses	1,000 00	11,400 00
Total		752,440 00
Board of Health—		
Salaries sanitary inspectors	9,800 00	
Salaries sanitary police officers	8,100 00	
Disinfectants	3,000 00	20,900 00
Lighting City—		
Gas contracts	147,000 00	
Oil contracts	30,000 00	177,000 00

Fire Department—		
Firemen's Charitable Association, city	140,000 00	
9 Firemen's Charitable Association, fifth dist	8,400 00	
Firemen's Charitable Association, sixth dist	15,000 00	
Firemen's Charitable Association, seventh dist	5,400 00	
Contingent extra service	600 00	169,400 00
Mayor and administrators		49,500 00
Criminal Justice—		
Superior Criminal Court, salaries and stationery	12,000 00	
Superior Criminal Court, clerk's fees.	12,000 00	
First District Court, clerk's fees	12,000 00	
Criminal sheriff, parish prison	65,000 00	
Criminal sheriff's fees	25,000 00	
District attorney's fees	7,500 00	
Jury commissioners	1,000 00	
Municipal police courts	20,000 00	
Fifth and seventh justices of the peace.	10,000 00	
"Black Maria," conveying prisoners.	1,500 00	
Rent, First District Court	3,000 00	
Rent, Metropolitan police station	4,200 00	
City physicians' salaries, etc	1,200 00	
Police officers on duty in municipal police courts	7,200 00	181,600 00
Miscellaneous—		
Law charges	30,000 00	
Support of orphans	36,788 00	
10 Coroners, salaries, etc	13,000 00	
Recording deaths	500 00	
Interest on current accounts	5,000 00	
Judgments	30,000 00	115,288 00
City debts, interest, and redemption..	307,500 00	
City debt interest	1,000,000 00	
Metropolitan police, $499,000; estimated to be collectible	400,000 00	
Public schools, $297,600; estimated to be collectible	223,200 00	
Park	50,000 00	1,980,700 00
Contingent		2,354 77
Grand total		$3,449,182 72

Adopted by the council of the city of New Orleans, January 18th, 1876, the veto of the mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Burke, Landry, McCarthy, Pillsbury—6
Nay: Bouny—1.

A true copy. (Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June 8th*, 1876.

We hereby certify the above to be a true and [*correct*] copy of ordinance 3,358, administration series, adopted January 18th, 1876, by the city council of the city of New Orleans, and duly promulgated.

11 (Signed) CHAS. J. LEEDS, *Mayor.*
" J. H. HARDY, *Secretary.*

Ordinance No. 3,369.

State of Louisiana.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BANKING CO. } No. 402.

MAYORALTY OF NEW ORLEANS.
CITY HALL, *January 26th*, '76.

No. 3,369, Administration Series.

An ordinance relative to the signing of tax-bills and licenses for the year 1876.

Be it ordained by the council of the city of New Orleans, that the following persons recommended by the administrator of public accounts be confirmed and approved as officers of the department of public accounts, to sign for said administrator in the cases named, to wit: Benjamin H. Watkins, William J. Crawford, and Charles Parnel, to sign tax-bills.

Adopted by the council of the city of New Orleans, January 25th, 1876.

(Signed) CHAS. J. LEEDS, *Mayor.*
A true copy. (Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June 8th*, 1876.

12 We hereby certify the within to be a true and correct copy of ordinance 3,369, administration series, adopted January 25th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHAS. J. LEEDS, *Mayor.*
" J. H. HARDY, *Secretary.*

Assessment-Roll.

New Orleans Canal and Banking Company.

No. Bill.	Asst. Dist.	No. of Square.	Description of R. E.	Where situated.	Capital.	Amt. of tax.
928 Bis.	5	171		Gravier and Camp Sts.	$700,000.00	$10,500.00

For affidavit of board and state city assessors see following page.

13 *Affidavit of Assessors.*

J. L. Herwig, Presdt. A. Dejoie, Secty.

OFFICE BOARD OF STATE AND CITY ASSESSORS,
PARISH OF ORLEANS, LA., No. 20 Carondelet St.,
NEW ORLEANS, *Oct. 30th*, 1875.

Board of state and city assessors, 1875: J. L. Herwig, D. Urban, G. E. Paris, H. DeFuentes, O. C. Blandin, A. Dejoie, Wm. Kern.

Fifth Assessment District—First Municipal District.

Grand total assessment, $700,000.00.

We, Joseph L. Herwig, George E. Paris, Ovide C. Blandin, Dominick Urban, H. DeFuentes, Aristidé Dejoie, William Kern, board of state and city assessors in and for the parish of Orleans, do solemnly swear that we have fully and faithfully assessed all persons and property in our parish for the year 1875; that we have given due notice to all tax-payers that we have commenced assessing their property, and have kept the rolls open from the first day of August to the first day of September, and that we have made every possible effort to make said assessment a fair and full cash
14 valuation, to the best of our abilities. So help us God.

(Signed) J. L. HERWIG, *Assessor 1st Dist.*
" GEO. E. PARIS, *Ass. 2 Dist.*
" O. C. BLANDIN, *Ass. 3rd Dist.*
" D. URBAN, *Ass. 4th Dist.*
" H. DEFUENTES, *Ass. 5th Dist.*
" A. DEJOIE, *Ass. 6th Dist.*
" WM. KERN, *Ass. 7th Dist.*

Sworn to and subscribed before me, this 30th October, 1875.
[SEAL.] (Signed) W. H. HOLMES,
Second Justice of the Peace for the Parish of Orleans, La.

I, Joseph L. Herwig, do solemnly swear, affirm, that I have set down in the assessment-rolls the names of all the taxable persons residing within my assessment district, according to the best of my

information; and that I have used all legal means provided to secure the necessary information; and that the said assessment-roll contains a true statement of the taxable personal estate of each person named in the roll, as ascertained by the declaration or affidavit of such person, or by such other means as were in my power; and that I have, in all cases where deemed necessary, interrogated, on oath or affirmation, each person marked on the rolls to
15 be assessed for property, in the form and manner provided by law. (Signed) J. L. HERWIG,
State and City Assessor, Parish of Orleans, First District.

Sworn to and subscribed before me, this 30th day of Oct., 1875.
(S'g'd) W. H. HOLMES,
Second Justice of the Peace for the Parish of Orleans, La.

Ordinance No. 3,367.

MAYORALITY OF NEW ORLEANS, CITY HALL,
January 26th, 1876.

(No. 3,367, Administration Series.)

An Ordinance levying City Taxes for the year 1876.

Be it ordained by the council of the city of New Orleans, that the following taxes be, and are hereby, levied and assessed for the year 1876, on all tax-payable property within the limits of the city of New Orleans, according to the assessment of said year, to wit:

City debt tax: For redemption and payment of interest on bonded debt, twenty-six cents on every one hundred dollars of valuation.

16 Police tax: Forty-two cents on every one hundred dollars of valuation.

School tax: Twenty-five cents on every one hundred dollars of valuation.

Current city expense tax: Fifty-seven cents on every one hundred dollars of valuation.

Total tax, one and one-half per cent. on *as* assessment of $119,045,515.

Adopted by the council of the city of New Orleans, January 25th, 1876, the veto of the mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Burke, Landry, Pilsbury—5.

Nays: Bonny—1.

(Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS, CITY HALL,
June 8th, 1876.

We hereby certify the within to be a true and correct copy of ordinance 3,367, administration series, adopted January 25th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHAS. J. LEEDS, *Mayor.*
" J. H. HARDY, *Secretary.*

Notice to Delinquent Tax-payers.

Extract from New Orleans Republican, April 21st, 1876.

17 DEPARTMENT OF FINANCE,
CITY HALL, *April 21st*, 1876.

All tax-payers of the city of New Orleans whose names are hereinafter set forth, referred to in the list, will take notice that their municipal taxes for the year 1876 have been for some time past, and are now, due and payable, the several amounts set opposite to their respective names are designations; and not only for the amounts of the face thereof, but interest at the rate of eight per centum per annum from the 31st day of March, A. D. 1876.

The aforesaid tax-payers are also notified that after the expiration of thirty days from date, during which delay there will be three publications hereof in the official journal of the city, prompt and summary proceedings will be taken in the Superior District Court for the Parish of Orleans, holding its sessions at the court-house in said city, to enforce an early collection and payment of the aforesaid taxes, principal and interest, together with all costs, charges, and expenses, including costs of clerk and sheriff and costs of court.

Furthermore, the aforesaid tax-payers are notified that this notice and publication constitutes legal citation on each and every
18 party named and referred to in the said list, and the said parties are hereby required to act accordingly.

(Sig.) ED. PILSBURY,
Administrator of Finance.

* * * * * * * * *

No. 528, Canal and Banking Company, $10,500.00.

* * * * * * * * *

Notice to Delinquent Tax-payers.

Extract from New Orleans Republican, May 2nd, 1876.

DEPARTMENT OF FINANCE,
CITY HALL, *April 21st*, 1876.

All tax-payers of the city of New Orleans, whose names are hereinafter set forth, referred to in this list, will take notice that their municipal taxes for the year 1876 have been for some time past, and are now, due and payable, the several amounts set opposite to their respective names or designations; and that the said taxes are payable not only for the amounts of the face thereof, but for interest at the rate of ten per centum per annum from the thirty-first day of March, A. D. 1876.

The aforesaid tax-payers are also notified that after the expiration of thirty days from date, during which delay there will be
19 three publications hereof in the official journal of the city, prompt and summary proceedings will be taken in the Superior District Court for the Parish of Orleans, holding its sessions

Sworn to and subscribed before me, this 6th day of June, A. D. 1876. (Signed) W. T. HOUSTON,

[SEAL.] *First Justice of the Peace for the Parish of Orleans.*

Judgment.

City tax series, 1876.

State of Louisiana.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS *vs.* CANAL AND BANKING COMPANY. } No. 402.

A default having been entered in this case, and the legal
24 delay having elapsed since such default was entered, and the defendant failing to appear and file an answer herein—

This case was called by the city attorney for the purpose of making such default definitive and final, and upon producing the tax-bills or claims against the defendant, now on file, with due proof of the publication of the same in accordance with law, together with other testimony, and the law and evidence offered being in favor of the city of New Orleans, it is hereby ordered, adjudged, and decreed that the judgment by default herein entered on the 6th day of June, A. D. 1876, be now confirmed and made final, and the said defendant, the Canal and Banking Company, hereby condemned to pay to the city of New Orleans the sum of ten thousand five hundred dollars, with ten per cent. interest per annum from the 31st day of March, A. D. 1876, until paid, seventy-five cents costs of advertising, and all costs of suit, with a lien and privilege, according to law, on the property described in the tax-rolls, and bills, or claims on file. And it is furthermore ordered, adjudged, and decreed that for the payment of the sheriff's and clerk's costs, they do have a lien
25 and privilege upon the judgment herein rendered.

Judgment rendered June 9th, A. D. 1876.

Judgment signed June 14th, A. D. 1876.

(Signed) B. L. LYNCH, *Judge.*

Copy of judgment served on the New Orleans Canal and Banking Company through George Jonas, its president. Issued on the 24th June, 1876.

City tax series, 1876.

The State of Louisiana.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS *vs.* CANAL AND BANKING CO. } No. 402.

I hereby certify, that on the 9th day of June, 1876, judgment was

rendered in this court in the following-entitled suit, in the words and figures following, to wit:

A default having been entered in this case, and the legal delay having elapsed since such default was entered, and the defendant failing to appear and file an answer herein—

This case was called by the city attorney for the purpose of making such default definitive and final, and upon producing the tax-bills, or claims against the defendant, now on file, with due
26 proof of the publication of the same in accordance with law, together with other testimony, and the law and the evidence offered being in favor of the city of New Orleans, it is hereby ordered, adjudged, and decreed that the judgment by default herein entered on the 6th day of June, A. D. 1876, be now confirmed and made final, and the said defendant, the Canal and Banking Company, hereby condemned to pay to the city of New Orleans the sum of ten thousand five hundred dollars, with ten per cent. interest per annum from the 31st day of March, A. D. 1876, until paid, seventy-five cents costs of advertising, and all costs of suit, with lien and privilege, according to law, on the property described in the tax-rolls, and bills, or claims on file.

And it is furthermore ordered, adjudged, and decreed that for the payment of the sheriff's and clerk's costs, they do have a lien and privilege upon the judgment herein rendered.

Judgment rendered June 9th, A. D. 1876.

Judgment signed June 14th, A. D. 1876.

(Signed) B. L. LYNCH, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed my seal of the said court, at the city of New Orleans, on
27 this 26th day of June, in the year of our Lord one thousand eight hundred and seventy-six, and the one hundredth year of the independence of the United States.

[SEAL.] (Signed) JNO. E. ROUX, *D'y Clerk.*

Sheriff's Return on foregoing copy of judgment.

Received June 22d, 1876, and on the 3d day of July, 1876, served a true copy of the within copy of judgment on defendant herein, Canal and Banking Company, through George Jonas, president, in person. Returned same day.

Sheriff's fee 50 cts. (Signed) J. BOURGEOIS, *Dy. Shff.*

Statement of Facts, filed July 10th, 1876.

(Signed) P. E. BURK, *Dy. Clk.*

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS AND CANAL & BANKING COMPANY. } No. 402.

It is agreed that in making out transcript of appeal instead of

copying the documents *in extenso*, the clerk shall only copy what is herein indicated, and that what is herein contained together with the documents and extracts of documents indicated, shall
28 serve and avail as a statement of facts.

1st. Caption of assessment-roll, extracts of so much as relates to the defendant and its taxable property, and affidavit of the assessors appended

2nd. Caption of delinquent list, extract of so much as relates to the defendants, and affidavit of A. P. Harrison.

3rd. Ordinances of the council numbered——, being ordinances adopting budget of expenses and receipts, and levying taxes of 1876, and also that authorizing certain persons to sign tax-bills.

4th. Tax-bill sued on.

5th. It is admitted that the proper printed forms, to be filled up with items of taxable property, were duly served by the assessors upon the president of the defendant's bank, and that he returned it filled and signed, and that it showed no taxable capital.

6th. That the capital of the defendants paid up is one million of dollars, of which $200,000.00 is invested in real estate and taxed as such, and that it held from the first of February to the first of July, 1875, the amount of greenbacks and national currency indicated by Exhibit "Z," hereto annexed and made a part of
29 this statement of facts.

7. The various acts of the legislature, constituting and relating to the charter of the defendant's bank and the city of New Orleans, shall be considered as in evidence without being copied in the record.

(Signed) FINNEY & MILLER,
Attorneys for New Orleans Canal & Banking Company.

(Signed) SAML. P. BLANC, *Assistant City Atty.*

State of Louisiana.

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 402.

Exhibit "Z," annexed to Statement of Facts, filed July 10th, 1876.

(Signed) P. E. BURKE, *Dy. Clk.*

See following page.

30 *Statement of Currency from 1st February, 1875, to 1st July, 1875.*

1875.	Greenbacks.	1875.	Nat. Currency.
Feb. 1	1,180,000	Feb. 1	383,000
2	1,180,000	2	333,000

3	1,187,000	3	400,000
4	1,189,000	4	341,000
5	1,200,000	5	526,000
6	1,223,000	6	460,000
8	1,223,000	8	429,000
10	1,253,000	10	553,000
11	1,253,000	11	537,000
13	1,251,000	13	486,000
15	1,283,000	15	517,000
16	1,295,000	16	679,000
17	1,273,000	17	700,000
18	1,272,000	18	657,000
19	1,265,000	19	667,000
20	1,273,000	20	595,000
23	1,272,000	23	587,000
24	1,274,000	24	774,000
25	1,285,000	25	812,000
26	1,287,000	26	786,000
27	1,389,000	27	544,000

31 *Statement of Currency from 1st February, 1875, to 1st July, 1875.*

1875.	Greenbacks.	1875.	Nat. Currency.
March 1	1,389,000	March 1	597,000
2	1,400,000	2	688,000
3	1,400,000	3	660,000
5	1,400,000	5	654,000
6	1,400,000	6	537,000
8	1,405,000	8	465,000
9	1,406,000	9	459,000
10	1,413,000	10	409,000
11	1,415,000	11	335,000
12	1,421,000	12	362,000
13	1,421,000	13	333,000
15	1,417,000	15	410,000
16	1,420,000	16	414,000
17	1,422,000	17	406,000
18	1,423,000	18	420,000
19	1,415,000	19	467,000
20	1,433,000	20	405,000
22	1,433,000	22	364,000
23	1,432,000	23	300,000
24	1,438,000	24	369,000
25	1,434,000	25	331,000
27	1,423,000	27	421,000
29	1,434,000	29	368,080
30	1,432,000	30	338,000
31	1,382,000	31	394,000

32 *Statement of Currency from February, 1875, to 1st, July 1875.*

1875.	Legal-tender.	1875.	National Cy.
April 1	1,421,000	April 1	385,000
2	1,398,000	2	268,000
3	1,430,000	3	405,000
5	1,435,000	5	385,000
6	1,434,000	6	379,000
7	1,435,000	7	355,000
8	1,456,000	8	197,000
9	1,474,000	9	260,000
10	1,481,000	10	266,000
12	1,482,000	12	295,000
13	1,478,000	13	371,000
14	1,475,000	14	296,000
15	1,474,000	15	281,000
16	1,474,000	16	343,000
17	1,517,000	17	338,000
19	1,521,000	19	344,000
20	1,523,000	20	360,000
21	1,535,000	21	392,000
22	1,535,000	22	407,000
23	1,535,000	23	406,000
24	1,530,000	24	324,000
26	1,504,000	26	291,000
27	1,503,000	27	315,000
28	1,367,000	28	310,000
29	1,367,000	29	316,000
30	1,362,000	30	305,000

33 *Statement of Currency from 1st February, 1875, to 1st July, 1876.*

1875.	Legal-tender.	1875.	National Cy.
May 1	1,310,000	May 1	248,000
3	1,317,000	3	266,000
4	1,220,000	4	290,000
5	1,272,000	5	316,000
6	1,272,000	6	310,000
7	1,270,000	7	262,000
8	1,273,000	8	256,000
10	1,274,000	10	235,000
11	1,274,000	11	206,000
12	1,273,000	12	238,000
13	1,172,000	13	314,000
14	1,172,000	14	332,000
15	1,172,000	15	300,000
17	1,167,000	17	289,000
18	1,170,000	18	260,000
19	1,116,000	19	234,000
20	1,114,000	20	214,000

21	1,062,000	21	221,000
22	1,062,000	22	200,000
24	1,012,000	24	204,000
25	962,000	25	222,000
26	962,000	26	227,000
27	912,000	27	228,000
28	912,000	28	246,000
29	912,000	29	203,000
31	912,000	31	200,000

34 *Statement of Currency from 1st February, 1875, to 1st July, 1875.*

1875.	Legal-tender.	1875.	Natl. Cy.
June 1	910,000	June 1	220 000
2	865,000	2	209,000
3	863,000	3	141,000
4	862,000	4	157,000
5	862,000	5	160,000
7	862,000	7	161,000
8	862,000	8	133,000
9	862,000	9	136,000
10	862,000	10	117,000
11	862,000	11	76,000
12	837,000	12	107,000
14	837,000	14	95,000
15	837,000	15	96,000
16	837,000	16	93,000
17	818,000	17	85,000
18	790,000	18	113,000
19	792,000	19	133,000
21	797,000	21	142,000
22	796,000	22	112,000
23	797,000	23	172,000
24	780,000	24	248,000
25	776,000	25	180,000
26	776,000	26	156,000
28	773,000	28	194,000
29	771,000	29	178,000
30	762,000	30	158,000
July 1	766,000	July 1	148,000

35 *Petition for Appeal, filed July 10th, 1876.*

(Signed) P. E. BURKE, *Dy. Clk.*

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING CO. } No. 402.

This petition of the New Orleans Canal and Banking Company, a corporation chartered by law,

Respectfully represents that said corporation is desirous to take a suspensive appeal from the final judgment rendered in the above-entitled cause on the ninth day of June, 1876, and signed on the 14th day of the same month.

Wherefore petitioner prays that it have and be allowed a suspensive appeal from said judgment to the supreme court, returnable according to law, on giving bond in favor of the clerk of this honorable court, in the sum of eighteen thousand dollars, with good and solvent security, and conditioned as the law requires; and petitioner prays that the city of New Orleans be cited in appeal through its mayor, Charles J. Leeds, and for all general equitable relief.

(Signed) FINNEY & MILLER, *Attys. for Petrs.*

Order.

36 Let this petition and bond of appeal be filed, and let a suspensive appeal be granted from the judgment herein, returnable to the supreme court of this state, on the first Monday of November next, on the appellant furnishing bond with good and solvent security in the sum of eighteen thousand dollars, conditioned as the law directs. (Signed) B. L. LYNCH,

New Orleans, July 8th, 1876. *Judge.*

Bond of Appeal, filed July 10th, 1876.

(Signed) P. E. BURKE, *Dy. Ck.*

Superior District Court for the Parish of Orleans.

CITY OF N. O.
vs.
N. O. CANAL AND BANKING CO. } No. 402.

Know all men by these presents, that we, the New Orleans Canal & Banking Company, as principal, and George Jonas, of the city of New Orleans, as surety, are held and firmly bound unto John Burke, clerk of the Superior District Court for the Parish of Orleans, his successors, executors, administrators, and assigns, in the sum of eighteen thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this eighth day of July, in the year of our Lord

37 one thousand eight hundred and seventy-six.

Whereas, the above bounden New Orleans Canal & Banking Company this day filed a petition of appeal from a final judgment rendered against it in the suit of City of New Orleans vs. New Orleans Canal and Banking Company, No. 402 in the Superior District Court for the Parish of Orleans, on the ninth day of June, 1876, and signed on the fourteenth day of June, 1876.

Now, the condition of the above obligation is such, that the above bounden New Orleans Canal and Banking Company shall prosecute its appeal, and shall satisfy whatever judgment may be rendered

against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said George Jonas shall be liable in its place.

(Signed) GEORGE JONAS, [L. S.]
Presdt. N. O. Canal & Banking Co.
(Signed) GEORGE JONAS. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) JNO. FINNEY.

Clerk's Certificate.

I, John Burke, clerk of the Superior District Court for the Parish of Orleans, do hereby certify that the foregoing sixty-
38 one pages do contain a true, correct, and complete copy of all the proceedings had, documents filed, and evidence adduced "(in accordance with the statement of facts herein filed and copied in the foregoing transcript of appeal)" in the certain case wherein the city of New Orleans is the plaintiff and the New Orleans Canal and Banking Company are defendants, and numbered on the docket of our said court 402.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of our said court, at New Orleans, on this 3rd day of August, A. D. 1876, and the independence of the United States of America the one hundred and first.

[SEAL.] (Signed) JOHN BURKE, *Clk. S. D. C.*

UNITED STATES OF AMERICA,
STATE OF LOUISIANA.

Supreme Court of the State of Louisiana.

Proceedings had in the Supreme Court of the State of Louisana, holding sessions at the city of New Orleans, in the case entitled and numbered on the docket of said court—

39 CITY OF NEW ORLEANS
vs.
N. O. CANAL AND BANKING COMPANY. } No. 6,359.

Appeal from the Superior District Court for the Parish of Orleans, filed August 5th, 1876.

(Signed) M. P. JULIAN, *Dy. Clk.*

Motion and Affidavit for trial by preference, filed Nov'r 22, 1876.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS AND CANAL BANKING COMP'Y. } No. 6,359.

In the Supreme Court, State of Louisiana.

On motion of Sam'l P. Blanc, asst. city attorney for the city of New Orleans, and on suggesting reference to the affidavit hereto

annexed, made under and by virtue of the 9th sec. of art. No. 45 of acts of 1870, extra session, it is ordered that the above case be called and set for hearing by preference.

Affidavit.

Personally appeared Samuel P. Blanc, asst. city atty., who, being first sworn, says, that the above-entitled case is one of serious public interest, in which a speedy decision is desirable.

40 (Signed) SAML. P. BLANC.

Sworn to and subscribed before me, this 22d day of November, 1876.

(Signed) JNO. M. HOWELL, *Clerk Sup. Court.*

Order fixing cause for trial. Extract from Minutes.

WEDNESDAY, *November* 22, 1876.

The court was duly opened; present, their honors John T. Ludeling, chief justice, and Rufus K. Howell, William G. Wyly, Philip H. Morgan, J. Edwards Leonard, associate justices.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359.

On motion of Samuel P. Blanc, esq., assistant city attorney for the city of New Orleans, and on suggesting reference to the affidavit on file—

It is ordered by the court that this case be called and set for hearing by preference.

Continuance. Extract from Minutes.

SATURDAY, *December* 23*d*, 1876.

The court was duly opened; present, their honors John T. Ludeling, chief justice, and Rufus K. Howell, William G. Wyly,

41 Philip H. Morgan, J. Edwards Leonard, associate justices.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359.

This case was called for trial, whereupon, on motion of John Finney, esq., who suggested the agreement and consent of counsel for parties in interest, the court ordered the case to be continued and entered at the foot of the docket.

Continuance. Extract from Minutes.

MONDAY, *March* 19, 1877.

The court was duly opened pursuant to adjournment; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade Des Blanc, William B. Eagan, William B. Spencer, associate justices.

CITY OF NEW ORLEANS
vs.
N. O. CANAL AND BANKING COMPANY. } No. 6,359.

This case was ordered by the court to be continued with preference.

Instructions to Submit, filed March 19, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL AND BKG. CO. } No. 6,359.

Submitted by plaintiff and appellee, with leave to file brief within 10 days. (Signed) SAML. P. BLANC, *for city.*

42 *Instructions to Submit, filed April* 20, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL BKG. CO. } Supreme Court. No. 6,359.

Submitted with leave to file brief in one week.
(Signed) SAML. P. BLANC, *Atty. for City of N. O.*

Cause Submitted. Extract from Minutes.

FRIDAY, *April* 20, 1877.

The court was duly opened; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade Des Blanc, William B. Egan, associate justices; absent, William B. Spencer, associate justice.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359.

This case was called for trial, whereupon the same was submitted to the court by counsel for parties in interest upon the briefs on file and to be filed; the brief for plaintiff to be filed within seven days from this date, and that of the defendant within seven days thereafter.

Opinion of the Court, filed May 14, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BANKING COMPANY. } No. 6,359.

Mr. Justice Spencer.

43 The city of New Orleans sued the defendant, Canal Bank, for a tax of 1½ per cent. on its capital not invested in real estate. The value of such capital is assessed at the sum of $700,000, making the amount of tax $10,500. There was judgment final on default in favor of the city, and the bank appeals. The case comes up on a statement of facts, of which the following are those material to the issue:

5th. It is admitted that the proper printed forms to be filled up with items of taxable property were duly served by the assessor upon the president of the defendant bank, and that he returned it filled and signed, and that it showed no taxable capital."

"6th. That the capital of the defendant paid up is $1,000,000, of which $200,000 is invested in real estate and taxed as such, and that it held, from 1st Feb'y to 1st July, 1875, the amounts 'of greenbacks' and national currency indicated by exhibit 'Z,' hereto annexed." The exhibit "Z" shows the amount of greenbacks and national currency respectively held by the bank for each day from 1st Feb'y to 1st July, the dates between which the law required the assessment to be made. The amounts fluctuate in "greenbacks" between $1,535,000 and $762,000, and in national currency from about $400,000 to $85,000. There was on hand June 30th $762,000 in "greenbacks," and $158,000 in national currency, making total $920,000.

44

It is conceded by both parties that whatever part of the capital of the bank was invested in United States stocks, bonds, and currency is by the laws of the United States exempt from taxation.

The defendant, on whom lay the burden, has offered no proof that any part of the capital of said bank was so invested. The admission in the statement of facts is that over and above the amount of $200,000 invested in real estate, the bank had a paid-up capital of $800,000, *and that it held*, from 1st Feb'y to 1st July, 1875, the amounts of greenbacks and national currency indicated by exhibit "Z."

It is not shown that the currency thus "held" *was its capital or any part thereof*. The exhibit shows that at several periods between 1st Feb'y and 1st July it "held" as much as $1,750,000 of currency of both kinds. There must have been at these times $950,000 of deposits, as the bank only had $800,000 of capital uninvested in real estate. Are we to presume that the bank had loaned its "deposits" and kept its "capital" when, on 30th June it only held $920,000 of currency. The counsel for defendant assume that such was the fact, but there is no proof of it, and we think the fairer presumption would be that it loaned or used its "capital" and kept its "deposits." Nor does the fact that the president in his return reported no taxable capital, materially affect the case, because it is fully offset by the fact that the assessor (who, under the law, is empowered as a public officer to decide primarily) reported the bank as having $700,000 of taxable capital. The presumption is that his report is true until disproved. We find no sufficient proof of the error to justify us in reversing the judgment of the court *a qua*.

45

If the bank's capital was invested in U. S. bonds and currency and thereby exempt, the fact of such investment should have been affirmatively proved and not left to inference and doubt. When one claims the benefit of an exemption, or that he is

46

within an exception, it is his duty, and the *onus* is on him, to make the facts appear clearly and distinctly upon which he rests his claim.

It is therefore ordered, adjudged, and decreed that the judgment appealed from be affirmed, with costs of both courts.

Judgment and Decree. Extract from Minutes.

MONDAY, *May* 14, 1877.

The court was duly opened pursuant to adjournment. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

His honor Justice Spencer pronounced the judgment and decree of the court in the following cases:

CITY OF NEW ORLEANS *vs.* NEW ORLEANS CANAL AND Banking Company. } No. 6,359. On appeal from the Superior District Court for the Parish of Orleans.

It is ordered, adjudged, and decreed that the judgment ap-
47 pealed from be affirmed, with costs of both courts.

* * * * * * *

Application for Rehearing, filed May 15, 1877.

Supreme Court of Louisiana.

CITY OF NEW ORLEANS. *vs.* NEW ORLEANS CANAL AND BANKING CO. } No. 6,359.

In this case Mr. Blanc was allowed a week after the case was submitted in which to file a brief, and we were allowed a week to file a brief in reply.

On the 9th of May, his honor, the chief justice, upon an application in writing to extend the time, granted three days from that date.

Three copies of a brief, in reply to Mr. Blanc, on the evening of Saturday, the 12th inst., and five more on Monday morning, were filed.

It has occured to us that this last brief did not reach the attention of the court before the case was decided.

We respectfully pray for a rehearing, and refer to that brief in support of this application.

(Signed) FINNEY & MILLER,
For Defendants.

48 *Reply of Appellant to Plaintiff's Brief (referred to in Application for Rehearing), filed May* 12, 1877.

CITY OF NEW ORLEANS *vs.* NEW ORLEANS CANAL AND BANKing Company. } Reply of appellant to plaintiff's brief.

The learned counsel for the plaintiff seems to have had so much dif-

ficulty in understanding the grounds of our defence, that it has occurred to us that we should state precisely what we supposed sufficiently appeared, without a formal and express enunciation.

The learned counsel was correct in his solution of our meaning. Our view of the case is simply this: the treasury notes of the United States and the notes of the national banks, which are guaranteed by the government, are obligations of the United States, and are not taxable by express statute and on general principles. And all of our capital, with the exception of two hundred thousand dollars invested in real estate (on which the bank has paid its tax like any other person), is invested in treasury notes and na-
49 tional currency.

But the learned counsel says we must prove this. We do not perceive how it can be proved more clearly than appears by the statement of facts.—(Rec. p. 44.) Of the million of dollars which constitutes the capital of this bank $200,000.00 was invested in real estate, and we always had more non-taxable money in our coffers than the remainder of our capital. That money was the property of the bank, whether received in discharge of a debt to itself or for its own account, or deposited by its customers. The deposit of money, unless special, passes the title to the funds deposited to the bank, and the relations of the bank to the depositor is that of debtor, not depositary. Money has no ear-marks; all money in the bank not specially deposited was the property of the bank.—(Matthews, Finlay & Co. vs. Their Creditors, 10 An., 343; Sims vs. Bean, 10 An., 346.)

The learned counsel argues that it does not appear that our capital was invested in money. We do not perceive how we can prove it except by showing, as we have shown, that we always have
50 that much money on hand. It was not intended by the law which exempts from taxation these kinds of currency, that the notes should be labeled and put away, and marked or denominated capital. For the same law which exempts from taxation, has careful provisions to prevent such currency from being hoarded or taken out of circulation, and also to drive out of circulation the issues of all state banks. Both of these kinds of currency are highly accredited by the provisions of the acts of Congress. The treasury notes are made a legal tender for all debts and obligations, public or private, except duties on imports and interest on the public debt. (12 Statutes at Large, 345.)

The national currency is made a legal tender for all debts due by the government except duties on imports, interest on the public debt, and the obligation to redeem the currency of the national banks.—(13 Stat. at Large, p. 106, sec. 23.)

The government guarantees the redemption of this kind of currency, and is secured in its guarantee by a pledge of its own bonds.

The issues of other banks are driven out of circulation by
51 a tax which amounts to a prohibition, and which was evi-

dently intended as a prohibition. It has so operated.—(13 Stat. at Large, p. 484, sec. 6.)

The law expressly exempts from taxation these kinds of currency, and it intends that they shall circulate as money; and it did not intend that they shall be exempt from taxation only on condition that they ceased to perform the functions for which they were created, viz., that of constituting a circulating medium.

The capital of the bank originally consisted of so many dollars per share paid into the bank by the shareholders. That was paid in specie, or its equivalent, bank notes convertible into specie. In the course of time this kind of money was exchanged for other kinds, as city notes and Confederate treasury notes. Finally, the necessities of the government compelled the issue of treasury notes or legal tenders and the establishment of the national banking system. This drove out of circulation all other currency, and the funds of the bank were gradually converted into legal tenders and notional bank notes; which are declared by the acts of Congress to be non-taxable. Why should we not have the benefit of
52 the exemption? The Bank of New York had the benefit of it on its greenbacks in precisely the same condition of things, except that the acts of Congress declaring the exemption had not been passed. The exemption was allowed on general principles, as explained in our first brief.—(See 7 Wall., 26.)

The assessors fix the capital of the bank at $700,000.00. Surely, if we show non-taxable money to that amount, we are within the exemption. If not, under what circumstances can we enjoy the benefit of the law? It will not be contended that we must lock up out of circulation and keep unemployed so much money.

The bank, as was decided in 21 Wallace, p. 28, is not taxable on its deposits, it being clear to the most ordinary understanding that a bank's deposits are liabilities, not assets nor capital.

The securities of the government are not taxable. Suppose A and B form a partnership for the purpose of buying and selling United States bonds. Each contributes for that purpose fifty thousand dollars as capital. They deposit that amount as a margin in the hands of some capitalist who will engage to hold for
53 their account and carry for them, securities to the value of a million of dollars. Our firm can be constantly buying and selling to that amount. What is their capital? It is not the amount of securities which are carried for their account; for nine hundred thousand dollars of that amount is borrowed money. This is decided in 21 Wall., 28. Nor would they lose the benefit of the exemption of their capital, the $100,000.00, by changing the securities as the interest of their business required; provided they always consisted of government securities.

In conclusion, we submit that our learned opponent has shown no reason why we should not be allowed the exemption, except that the assessors have decided otherwise.

(Signed) **FINNEY & MILLER**, *for Defendant.*

Rehearing Granted. Extract from Minutes.

MONDAY, *May 21st*, 1877.

The court was duly opened; present, their honors, Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

54 His honor the chief justice pronounced the judgment and decree of the court in the following cases:

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BANKING COMPANY. } No. 6,359.

It is ordered that the rehearing applied for in this case be granted.

Motion for Oral Argument, filed Nov'r 5, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BKG. CO. } No. 6,359. Supreme Court.

On motion of Finney and Miller, for defendants, and Sam. P. Blanc, attorney for plaintiff, and on their suggesting that they deem it of importance to their respective clients that the above cause should be argued orally,

It is ordered that permission be given counsel to argue the above cause orally. (Signed) SAMUEL P. BLANC,
Attorney for City.

(Signed) FINNEY & MILLER,
For Defendant.

Order allowing Argument. Extract from Minutes.

55 TUESDAY, *November* 6, 1877.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359. (On Rehearing.)

On motion of Samuel P. Blanc, esq., of counsel for plaintiff, and Finney & Miller, of counsel for defendant—

It is ordered by the court that an oral argument be allowed in this case.

Continuance. Extract from Minutes.

WEDNESDAY, *November* 7, 1877.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL & BANKING COMPANY. } No. 6,359. (On Rehearing.)

This case was called for trial, and having heard argument from John Finney, esq., of counsel for defendant and appellant herein—

56 The court ordered the case to be continued for further argument till to-morrow, Thursday, the 8th instant.

Cause submitted. Extract from Minutes.

THURSDAY, *November* 8, 1877.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359. (On Rehearing.)

This case was called for trial, and having heard argument from Samuel P. Blanc, esq., of counsel for the plaintiff, appellee herein—

The court took said case under advisement upon the briefs on file and to be filed within 7 days from this date.

Agreement of Counsel, filed Nov'r 16, 1877.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL & BANKING COMPANY. } No. 6,359.

57 *Statement of the affairs of the New Orleans Canal and Banking Company, on Monday, 28th June,* 1875.

Real estate		182,516 85
Stocks		8,228 35
Taxes paid		14,431 65
Suspended debts		54,740 80
Foreign and domestic bills protested		26,949 73
Notes and bills discounted		1,833,146 41
Foreign and domestic exchange		919,996 51
Interest due on loans on call		3,349 47
City 7 per cent. gold bonds ($50,000)		25,750
Cash items:		
Gold	32,419 80	
Legal tenders	974,777 17	
Checks sent to clearing-house	172,409 73	1,179,606 70
		4,248,716 47

Capital stock		1,000,000	
Profit and loss		99,694	
Dividends unpaid		46,556	
Individual depositors	3,044,957 19		
Foreign banks and bankers	48,061 78		
Circulation	9,447 50	4,248,716 47	

We accept the above as a correct statement of the average condition of the bank during 1875, and agree that it shall be considered by the court in deciding the case.

(Signed) SAM. P. BLANC,
Atty. for city of N. O.

(Signed) JNO. & W. S. FINNEY,
58 *For the New Orleans Canal & Banking Company.*

Opinion of the Court, filed December 4, 1877.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL & BANKING CO. } No. 6,359. (On Rehearing.)

Mr. Justice Eagan.

Since the former hearing of this cause the evidence has been supplemented by consent of counsel by the following, which is accepted by both parties "as a correct statement of the average condition of the bank during 1875," the tax for which year is the matter in controversy.

Statement of the affairs of the New Orleans Canal and Banking Company, on Monday, 28th June, 1875.

1. Real estate			$182,516 85
2. Stocks			8,228 35
3. Taxes paid			14,431 65
4. Suspended debts			54,740 80
5. Foreign and domestic bills protested			26,949 73
6. Notes and bills discounted			1,833,146 41
7. Foreign domestic exchange			919,990 51
8. Interest due on loans on call			3,349 47
9. City 7 per cents. gold bonds ($50,000)			25,750 00
10. Cash items:			
11. Gold	$32,419 80		
59 12. Legal tender	974,777 17		
13. Checks sent to clearing-house	172,409 73	1,179,606 70	
			$4,248,716 47

14. Capital stock.....	1,000,000 00	
15. Profit and loss.....	99,694 00	
16. Dividends unpaid.....	46,556 00	
17. Individual depositors.....	3,044,957 19	
18. Foreign banks and banking.....	48,061 78	
19. Circulation.....	9,447 50	
		$4,248,716 47

The amount invested in real estate, and which cannot of course be taxed as *capital*, because taxed as real estate, appears from this statement to be $182,516.85, or $17,483.15 less than the amount allowed by the assessor on this account, so that taking it from the original capital of $1,000,000.00 *of dollars*, there would be left $817,483.15 of *the original capital*.

It is claimed by the defendant, and may be for the purposes of this case conceded, that the bank is not taxable upon its deposits, because they represent not assets, but liabilities, and form no part of its *capital* proper. Does it, however, follow that it is not taxable *on its otherwise taxable assets because* it owes at the time more
60 to its depositors than it has funds in its vaults to meet on demand? If so, then the most solvent bank in the country which by good management or good fortune has doubled its original capital and by its charter or the consent of its stockholders (otherwise given) declares no dividend until the end of a term of years or until its final liquidation, but keeps reinvesting for profit its acquisitions as well as its original capital would be exempt from taxation on that account if it had not always in its vaults the means of immediate payment of its deposits when they equal or exceed the original capital, and we need go no further in the enquiry. This, however, is not pretended in the case at bar, in which the deposits or rather *the amount due to the depositors* is shown to be over three times as much as the original capital invested. The truth is, that while deposits with a bank *constitute to that extent debts* or liabilities, *all the assets* of the bank, *no matter of what they consist*, provided only they be available, must be deducted from the amount of deposits before it can be ascertained *how much*, if any, its capital stock has been diminished.

61 Now it needs no argument to demonstrate that deposits are made in whatever currency is accepted or created as a circulating medium at the time, say in the case at bar, in legal-tender notes of the U. S., which are themselves exempted by law from taxation. Suppose, then, that $3,000,000.00 *of dollars* was so deposited with the defendant, and that it had an equal amount of legal-tender notes with which to meet the call of its depositors; will it be urged that because those notes are themselves exempt from taxation they should be counted and considered no part of the assets of the bank, notwithstanding they furnish the means of immediate redemption of its liabilities on this account, and that

although the bank should do what in law and good faith it is bound to do, and so long as it continues business must do—that is—should extinguish its liability for deposits by the use of the legal-tender notes in its vaults, that its capital represented by the remainder of its assets, however large, and though in such form as not to be themselves non-taxable, shall not be taxed simply because its deposits being debts and not capital and its legal-tender notes which
62 are exempt by the terms of the law, when added together, aggregate an amount equal to or greater than the remaining assets of the bank, and, therefore, show an absorption of the total capital?

The fallacy of this reasoning becomes at once apparent when we see that in the case put the bank might be able to repay to its stockholders the amount of the capital stock and a large profit or dividend besides from other sources after redeeming its entire deposits with the legal tenders which formed part of its available assets.

It is obvious from the statement furnished by the defendant and accepted by the plaintiff that the former invested its capital in something more than and other than greenbacks or legal tenders, and it is this excess after deducting such property as is taxed in other form which the city claims the right to tax. Let us put the case in another form to test the correctness of this claim. The paid-up capital stock of the bank is $1,000,000.00. On the faith of
63 this and owing to the public confidence inspired by the character of its managers $3,000,000.00 *of dollars* in greenbacks are deposited with it, the moment it is opened for business, and that before it has had opportunity to invest or part with one dollar of *its* capital, the whole amount of these deposits are recalled! Now, according to the argument of defendant's counsel you must add the exempted greenbacks to the exempted debts due the depositors and thus make up a sum of exemptions of $6,000,000.00 instead of permitting the one to do as it does in point of fact (*i. e.*) offset or pay the other! In the case put the bank would be left with its original capital (which is taxable by the very terms of the law) undiminished in the smallest degree and shall not be taxed to the extent of a single dollar!!! And yet this would be the necessary consequence of the argument and of the reasons for exemption set up by the defendant's counsel. The fact that the original capital of the bank instead of being invested as in the case put, is invested in or represented by available securities which *are not*
64 *exempted* from taxation *provided they be not themselves taxed in another* form, only makes it come more strictly within the law subjecting it to taxation. To make good the argument it is necessary that the entire capital of the bank should be invested in greenbacks *and nothing else*, and that it should have no other means of redeeming its deposits.

Now, it may be conceded as before remarked, for the sake of the argument, that neither deposits nor greenbacks should be counted

in ascertaining whether and how far the defendant is taxable on its capital. But as the latter afford "pro tanto" a means of paying the former, *on this theory*, the balance must be struck between them. The statement of the defendant, which is accepted by the plaintiff, shows what are put down as assets, $4,248,716.47, from which deduct amount due depositors, $3,044,957.19, less legal tenders, $974,-777.17 as stated, equal to $2,070,180.02, and we have a balance of $2,178,536.45. But as the same legal tenders already used
65 to offset so much of the debts due depositors also goes to make up the sum of the assets, they must be deducted also from this balance, which leaves still $1,203,759.28. From this deduct amount invested in real estate and taxed as such.....$182,516.85
Taxes paid which are not assets..... 14,431.65
Suspended debts, as per statement..... 54,740.80

Aggregating.....$251,689.30
which taken from the last balance of assets, leaves still $952,069.98. Deduct further amount charged to profit and loss, $99,694.00, amount due foreign banks and banking, $48,061.78, and amount of circulation, $9,447.50, aggregating $157,204.28, and we would still have a balance of $794,865.70, or $94,865.70, more than the amount for which the bank was assessed. Add to this the suspended but not necessarily non-collectible debts and not put down as such, which amount as per statement to $54,740.80, and we have an excess beyond assessment of $149,606.50, from which, treating it as a debt, deduct if you will amount of dividends unpaid, $46,556.00, and we have still an excess of $103,050.50. But in fact dividends
66 are not properly debts but only shares of profits. So that, even accepting the theory of the defendant's counsel, that "the capital of a bank like the capital of a merchant or individual consists *of the value of its assets after deducting the amount of its liabilities*. No error to the prejudice of the bank has been committed. To arrive at any other conclusion, we should have to eliminate from its assets those which are most available and daily used to redeem its deposits, (i. e.,) the currency in its vaults, although it may equal or even exceed those deposits. We should not only have to do this, but to go further and hold as insolvent a perfectly solvent bank, which, according to its own counsel, "declares annual dividends," and which, according to the statement furnished from its own books, had at its date declared a dividend of which $46,556.00 remained still unpaid, and which dividends, in the very nature of things, are only derived and derivable from the profits in money or the stock invested, to say nothing of the actual value of its property and assets in other forms. It has, however, been expressly
67 decided by this court that all moneys deposited in bank otherwise than as special deposits, are its property—*in other words, form part of its assets*—(see 10th A., 343, and same, 346)—in other words, its means of meeting its liabilities, whether to deposi-

tors or other persons, and also of paying any dividends or distribution of profits to its shareholders.

If these deposits or other funds which may be found in the vaults of the bank consist of non-taxable government notes, the utmost limit of the decisions both of our own state courts and those of the United States, to which we have been referred by the able and experienced counsel for the defence, is that *so much* of the capital of the bank as is represented by such non-taxable notes is itself non-taxable, *and not that all its capital, no matter how invested*, is non-taxable. In one of those cases, reported in 9th Wallace, p. 357, the court said, "this capital may consist of cash or of bills and notes discounted and of real estate combined with them"—precisely the case at bar—and again, "the *whole of it* may be invested in
68 bonds of the government or in bonds of the state or in *bonds and mortgages*," and a "tax upon this capital is a tax upon the bank." In Bank of Commerce vs. New York, 2d Black, 620, a portion of the capital of the bank was invested in real estate, and the balance in stocks, bonds, and securities of the United States, and it was held "*that such portion* as was invested in government securities *was not liable to taxation by the state*." In the Bank of New York vs. Supervisors, 7th Wallace, 26, the court *maintained the exemption of so much* of the capital of the bank as was invested in treasury notes or greenbacks. We are also refered to the case of Home Mutual Ins. Co. vs. City of N. O., 20th A., 447, and Cooley on Taxation, p. 164, n. 1, as authority for the proposition that it is the actual and real capital of a corporation represented by the property in which it has been invested which is the subject of taxation, and not its merely nominal capital, and that if the capital be invested in non-taxable securities, it is not taxable.

That the plaintiff has followed the rule thus laid down so far
69 at least as to endeavor to ascertain and to tax the actual and not the merely nominal capital of the defendant, is apparent, as the tax is claimed not upon the nominal or fixed capital of the defendant of $100,000, but upon its supposed actual capital of $700,000. Both parties seem to agree to this standard of assessment. We have been referred by defendant's counsel to the case of Bailey vs. Clark et als., 15th Wallace, p. 284, for the proper interpretation of the term "capital" in matters of taxation. In that case the assessor claimed that not only the fixed capital of the defendants employed in banking should be taxed, but that all moneys borrowed temporarily by them from time to time, in the course of their business, formed part of their capital stock, and was liable as such to taxation, and the court held that it was not. The same principle is embodied in act of Congress passed in 1872, 17th Statutes at Large, p. 256, in regard to the tax imposed by the government of the U. S., which is referred to by Mr. Justice Field
70 in the case quoted. That learned judge gives a somewhat different interpretation of the meaning of the term "capital" in matters of taxation as applied to corporations, and one

which is not exactly reconcilable with that announced in the 20th A. case and the other authorities before cited. He says, in the 21st Wall. case, that "when and with respect to the property of a corporation or association, the term has a settled meaning; it applies only to the property or means contributed by the stockholders as the fund for the business or enterprise for which the corporation or association was formed;" and again, "we are satisfied that the term as used in the statute was intended to embrace only the fixed capital employed in the business of banking as distinguished from deposits and temporary loans made in the regular course of business." Burroughs on Taxation, p. 654, announces the same doctrine. It is, however, needless for the purposes of the present case to attempt to reconcile these diverse definitions
71 of what constitutes "capital" as an object of taxation, as the city concedes by not taxing it, that the amount of fixed capital paid in by the stockholders is not the standard, and only claims the right to tax the defendant on an amount less than that fixed capital by $300,000, a concession of which the defendant cannot complain and against which no argument is urged. This is, however, no longer an open question. The mode of assessment adopted in this case has prevailed in La. since 1830, when that eminent judge, Porter, announced it as the proper one in the case of the La. Ins. Co. vs. Morgan, 8th N. S., 631. Our predecessors reaffirmed that doctrine in the State vs. La. Mut. Ins. Co., 19th A., 475, and in Mechanics' and Traders' Bank vs. City of N. O., 23d A., 307, in which case the precise point at issue in the case at bar was determined, the court saying that an entire exemption of its capital from taxation could not be claimed by the corporation because *part of it was invested* in non-taxable securities. So, also, it is held under the revenue laws of the U. S. (see 21st Int. Rev. Rec., 353) based upon that ground.

72 The case in 21st Wallace is relied upon by defendant's counsel simply to show that deposits are not not liable to taxation, and it will be perceived from our computation that they have not been counted, but, on the contrary, *have been deducted* from the amount of "actual capital as represented by the property in which it has been invested," in accordance with the rule as announced by Judge Cooley, by the Supreme Court of the United States in the other case cited, and by our predecessors in the 24th A. case. A review of all of these latter authorities makes it also apparent that while so much of the capital stock of a corporation as may be invested in non-taxable securities is itself non-taxable, even if that amounts to the whole of the capital of the corporation, it is not true that when such investment in non-taxable securities amounts to less than the amount of capital of the bank or other corporation the excess represented by taxable property of any kind is non-taxable. Indeed, this is practically conceded by the defence in the
73 case at bar by the claim set up that the defendant always had on hand greenbacks or legal tenders enough, together

with the value of the real estate which is taxed as such to make up the sum of defendant's capital. The error and the fallacy in the position of the defendant is that by reason of this fact an entire exemption from taxation on its capital is claimed, notwithstanding its own statement shows a large amount of property or of "capital invested in and represented by property" *which is not non-taxable* or exempt under any provision of law; we need only instance one or two items in the statement, (i. e.,) "notes and bills discounted, $1,833,146.41;" "foreign and domestic exchange, $919,996.51," an item of itself not very far short of the whole amount of legal tenders for which exemption is claimed. The city has not claimed or sought in the assessment complained of to tax the deposits of the defendant, (i. e.,) the *debts* due by it to depositors, which are strictly not deposits but *only the consequences of deposits*, nor has it
74 sought to tax the non-taxable government legal tenders in the vaults of the bank, as will be seen by recurring to the tabular statement already made by us in this opinion. All that the city claims, and we think correctly, is that, though themselves non-taxable, these legal-tender notes shall be counted as they are used and designed to be used as assets of the bank *for the purpose of off-setting* and extinguishing *so much of its indebtedness to depositors*, and that because so much of the capital of the bank is invested in non-taxable government securities, it does not follow that the remainder, which is not so invested, shall not be taxable. Any other view would double in favor of the defendant the amount of exemption: the legal tenders would be counted twice for that purpose—once because they are legal tenders, and once because they represent so much of deposits. While, if there is any force in the latter ground of exemption, it would only result that the legal tend-
75 ers are exempted, *not twice over*, but for the *two reasons* urged by defendant's counsel, *either* of which, if well founded, will suffice, but not both with the effect claimed to duplicate the exemption. While we do not for a moment argue, however, that deposits in the sense of *debts due depositors* should be counted in estimating the real and actual capital of a bank for the purposes of taxation, neither are we prepared to give our assent to the doctrine that money in the vaults of the bank, *although derived from deposits*, is exempt from taxation for that reason alone.—(See Burroughs, p. 655, and Milton vs. Savings Inst'n, 17th Wallace, 109.) On the contrary, we think it has been properly adjudged in the cases already cited to be the property of the bank.

We see no error in our former decree in this case, which is, therefore, ordered to be affirmed.

Judgment and Decree. Extract from Minutes.

TUESDAY, *December* 4, 1877.

The court was duly opened; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De
76 Blanc, William B. Egan, William B. Spencer, associate justices.

His honor, Justice Egan, pronounced the judgment and decree of the court in the following cases:

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL AND BANKING COMPANY. } No. 6,359. (On rehearing.)

We see no error in our former decree in this case, and it is, therefore, ordered to be affirmed.

* * * * * *

Petition for Writ of Error, filed Dec'r 12, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BANKING CO. } No. 6,359. Supreme Court.

To the Honorable Thomas C. Manning, chief justice of the Supreme Court of the State of Louisiana.

This petition of the New Orleans Canal and Banking Co.—

Respectfully represents, that it is advised there is error to its prejudice in the judgment of the honorable the Supreme Court of the State of Louisiana, rendered on the 4th day of December, 1877, in a certain cause wherein the city of New Orleans was plaintiff, and
77 the New Orleans Canal and Banking Company, your petitioner, was defendant. That said cause involved in its decision the construction of the laws of the United States, and especially of sections 3,701 and 5,413 of the Revised Statutes, that your petitioners claimed to be exempt from a tax on its capital, imposed by the city of New Orleans, by reason of such laws and statutes, and the judgment was against the exemption claimed.

Wherefore petitioner prays your honor to allow and grant it a writ of error to the Supreme Court of the United States, to operate as a supersedeas, and to be returnable, according to law, upon petitioner's giving bond for an amount to be fixed by your honor, in favor of the city of New Orleans, and conditioned according to law.

(Signed) JNO. & W. S. FINNEY,
Attorneys for the New Orleans Canal & Banking Company.

Order.

Let a writ of error issue as herein prayed for, to operate as a supersedeas, upon the giving of a bond by the New Orleans
78 Canal and Banking Co., plaintiff in error, in favor of the city of New Orleans, in the sum of nineteen thousand dollars, with good and solvent security, and conditioned according to law; said writ to be returnable on the 2d Monday of October, 1878.

December 12, 1877. (Signed) TH. C. MANNING,
Chief Justice of Supreme Court of La.

Writ of Error, filed Dec'r 12, 1877.

NEW ORLEANS CANAL AND BANKING COMPANY, Pl'ff in Error, *vs.* CITY OF NEW ORLEANS, DEF'T IN ERROR. } No. 6,359.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Supreme Court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity
79 of the said state, in which a decision could be had in the said suit between the city of New Orleans, plaintiff, and the New Orleans Canal and Banking Company, defendant, a manifest error hath happened to the great damage of the said New Orleans Canal and Banking Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs
80 of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 11th day of December, in the year of our Lord one thousand eight hundred and seventy-seven. (Signed) T. A. WOOLFLEY,

[SEAL.] *Clerk of the United States Circuit Court for the District of Louisiana.*

Copy of Writ of Error, filed Dec'r 12, 1877.

NEW ORLEANS CANAL AND BANKING COMPANY, Pl'ff in Error, *versus* CITY OF NEW ORLEANS, DEF'T IN ERROR. } No. 6,359.

Copy of a writ of error lodged in the clerk's office of the Supreme Court of Louisiana, for defendant in error, in pursuance of the statute in such cases made and provided, this twelfth day of December, 1877, one thousand eight hundred and seventy-seven.

(Signed) JNO. & W. S. FINNEY,
Attorneys for plaintiff in error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the
81 judges of the Supreme Court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said state, in which a decision could be had in the said suit between the city of New Orleans, plaintiff, and the New Orleans Canal and Banking Company, defendant, a manifest error hath happened to the great damage of the said New Orleans Canal and Banking Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this
82 writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 11th day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] (Signed) T. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Bond for Writ of Error, filed Dec'r 12, 1877.

CITY OF NEW ORLEANS
vs.
N. O. CANAL & BANKING CO. } No. 6,359.

Know all men by these presents, that we, the New Or-
83 leans Canal & Banking Co., as principal, and Edmund J. Hart and Joseph C. Morris, as sureties, are held and firmly bound unto the city of New Orleans in the full and just sum of nineteen thousand dollars, to be paid to the said city of New Orleans, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this eleventh day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas, lately, in the Supreme Court of Lousiana, in a suit depending in said supreme court, wherein the city of New Orleans was plaintiff and the New Orleans Canal and Banking Co. was defendant, judgment was rendered against the said New Orleans Canal and Banking Co., defendant, and the said New Orleans Canal and Banking Co. having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to re-
84 verse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington the 2d Monday of October next.

Now, the condition of the above obligation is such, that if the said New Orleans Canal and Banking Co. shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) J. C. MORRIS, [L. S.]
President of New Orleans Canal and Banking Co.
(Signed) E. J. HART. [L. S.]
(Signed) J. C. MORRIS. [L. S.]

Sealed and delivered in the presence of—
(Signed) C. H. JUMONVILLE.

Approved:
(Signed) TH. C. MANNING, *Chief Justice of La.*

Citation.

Supreme Court of Louisiana.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CANAL & BANKING CO. } No. 6,359.

85 THE UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana.

The President of the United States to the city of New Orleans, to be served on its mayor, Edward Pilsbury, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Louisiana, in a certain suit, wherein the city of New Orleans is plaintiff, and the New Orleans Canal and Banking Company is defendant, to show cause, if any there be, why the judgment rendered against the said New Orleans Canal and Banking Company as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12 day of Dec., in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] (Signed) TH. C. MANNING, *Chief Justice.*

86 *Sheriff's Return.*

Rec'd Dec. 15, '77, and on the same day, month, and year I served a copy of the within citation on Edward Pilsbury, mayor of the city of New Orleans, by leaving the same at the office of the mayor, room No. 9, city hall, in the hands of his private secretary, E. L. Bower; said Edward Pilsbury being absent at time of said service.

Returned same day.

(Signed) H. C. THOMAS, *Dy. Shff.*

Shff. fees, 50 cents.

Affidavit.

Henry C. Thomas, being duly sworn, deposes and says, that all the facts and statements contained in the foregoing return are true and correct. (Signed) HENRY C. THOMAS.

Sworn to and subscribed before me, this 28 Jan'y, 1878.

[SEAL.] (Signed) T. McC. HYMAN,
Dy. Clerk Supreme Court of La.

Clerk's Certificate.

UNITED STATES OF AMERICA.

87 Supreme Court of the State of Louisiana.

I, Alfred Roman, clerk of the Supreme Court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing eighty-six (86) pages contain a full, true, and complete copy of the transcript of the proceedings had in the Superior District Court for the Parish of Orleans, in a certain suit, wherein the city of New Orleans was plaintiff, and the New Orleans Canal and Banking Company was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant, which appeal is now on the files thereof under No. 6,359.

88 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this third day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] ALF'D ROMAN, *Clerk.*

UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana.

I, Thomas Courtland Manning, chief justice of the Supreme Court of the State of Louisiana, do hereby certify that Alfred

Roman is clerk of the Supreme Court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of Alfred Roman to the within certificate is in the proper handwriting of him, the said clerk, and that said certificate is in due form of law, and that full faith and credit are due to all of his official
89 acts as such.

In testimony whereof, I have hereunto set my hand and seal, at Monroe, in the parish of Ouachita, this fifth day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] TH. C. MANNING,
Chief Justice of the Supreme Court of the State of Louisiana.

Supreme Court of the State of Louisiana.

I, Alfred Roman, clerk of the Supreme Court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the Honorable Thomas Courtland Manning is, and was at the time of signing the foregoing document, chief justice
90 and presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof, I have hereunto set my hand and affixed the seal of this honorable court, this sixth (6th) day of July, *Anno Domini* 1878.

[SEAL.] ALF'D ROMAN, *Clerk.*

(Endorsed on cover:) Louisiana Sup. Court. No. 836. The New Orleans Canal and Banking Company, plaintiff in error, vs. The City of New Orleans. Filed 8th October, 1878.

SUPREME COURT

OF THE UNITED STATES.

No. 836.

NEW ORLEANS CANAL AND BANKING COMPANY, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

JNO. FINNEY,

Att'y and of Counsel for Plaintiff in Error.

Sauvé & Waggaman, Printers, 21 Commercial Place.

SUPREME COURT

OF THE UNITED STATES.

No. 836.

NEW ORLEANS CANAL AND BANKING COMPANY, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

The City of New Orleans claims of the plaintiff in error, commonly called the Canal Bank, a tax of one a half per cent. on its capital, assessed at $700,000. The suit was brought according to a special statute, without any petition or other written form of pleading or citation in the usual mode. The mode of proceeding is established by section 9 of act No 48, La. session acts of 1871, p. 147.

The publication of the list of delinquent taxpayers in the official journal, with a notice, is the only process or pleading necessary. A copy of the notice will be found at page 13 of the printed record, to which, in this brief, we will always refer.

As no exceptions are taken to the regularity of the proceedings, we need not go into further particulars.

On the 16th of June, 1876, upon producing proof of publication of the notice to delinquent tax payers and filing the tax bill, judgment by default was entered. See Rec. p. 5.

This judgment by default "consists merely in a "statement on the records of the court, showing "that the defendant has failed to appear." Code of Practice, art. 311.

"If two days after this first judgment has been "rendered the defendant neither appear nor file "his answer, definitive judgment will then be given "for the plaintiff, provided he prove his demand. "This proof is required in all cases." Act No. 300 of the acts of 1853, p. 268.

On the 9th of June, 1876, upon administration of proof final judgment was rendered. Record, 16.

Your Honors are aware that the Supreme Court of Louisiana in civil cases passes upon the final facts as well as the law. With a view to an appeal a statement of facts was agreed to which we copy from p. 17:

Statements of Facts, filed July 10th, 1876.

(Signed) P. E BURKE, *Dy. Clk.*

Superior District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
NEW ORLEANS & CANAL & BANKING CO. } No. 402.

It is agreed that in making out transcript of appeal instead of copying the documents *in extenso*, the clerk shall only copy what is herein indicated, and what is herein contained together with the docu-

*N.B. "CODE OF PRACTICE, ART. 602.

"When the depositions of witnesses have not been taken in writing in the inferior court, the party intending to appeal, or his advocate, must require the adverse party or his advocate, to draw up, jointly with him, a statement of the facts proved in the cause, and this statement thus drawn up and signed, either by the parties or their advocates, shall be annexed to the records, and a transcript of the same transmitted to the Supreme Court."

28 ments and extracts of documents indicated, shall serve and avail as a statement of facts.

1st. Caption of assessment roll, extracts of so much as relates to the defendant and its taxable property, and affidavit of the assessors appended.

2nd. Caption of delinquent list, extract of so much as relates to the defendants, and affidavit of A. P. Harrison.

3rd. Ordinances of the council numbered———, being ordinances adopting budget of expenses and receipts, and levying taxes of 1876, and also that authorizing certain persons to sign tax bills

4th. Tax bill sued on.

5th. It is admitted that the proper printed forms, to be filled up with items of taxable property, were duly served by the assessors upon the president of the defendant's bank, and that he returned it filled and signed, and that it showed no taxable capital.

6th. That the capital of the defendants paid up is one million of dollars, of which two hundred thousand dollars is invested in real estate and taxed as such, and that it held from the first of February to the first of July, 1875, the amount of greenbacks and national currency indicated by Exhibit "Z,"

29 hereto annexed and made a part of this statement of facts.

7th. The various acts of the legislature, constituting and relating to the charter of the defendant's bank and the city of New Orleans, shall be considered as in evidence without being copied in the record.

(Signed) FINNEY & MILLER,
Attorneys for New Orleans Canal and Banking Co.
(Signed) SAML. P. BLANC,
Assistant City Attorney.

The schedule Z runs from pages 18 to 21, of the Record, and shows the amount of United States

treasury notes and National Bank notes, held each day by the Canal Bank, from the first of February, to the first of July, 1875, the period during which the assessment roll was made, on which the tax is claimed. From that schedule it will appear, that during that period the bank never had less than $762,000 00 in treasury notes, and $158,000 00 in National Bank notes. An appeal was taken to the Supreme Court of the State. The case was argued and submitted, and decided against the bank, Judge Spencer delivering the opinion, which will be found at page 25. We quote from the opinion, which your Honors will also consider as an additional statement of facts. See Stewart vs. Kahn, 11 Wall. 493

"The City of New Orleans sued the defendant, "Canal Bank, for a tax of 1½ per cent. on its capital "not invested in real estate. The value of such "capital is assessed at the sum of $700,000 00, "making the amount of tax $10,500 00.

"There was judgment final on default in favor of "the City, and the bank appeals.

"The case comes up on a statement of facts, of "which the following are those material to the "issue:

5th. "It is admitted that the proper printed forms to be filled up with items of taxable property, were duly served by the assessor upon the president of the defendant bank, and that he returned it filled and signed, and that it showed no taxable capital."

records, and a transcript of the same transmitted to the Supreme Court."

6th. "That the capital of defendant paid up is $1,000,000, of which $200,000 is invested in real estate, and taxed as such, and it held, from 1st Feb. to 1st July, 1875, the amounts 'of greenbacks' and and national currency indicated by exhibit 'Z,' hereto annexed." The exhibit "Z" shows the amount of greenbacks and national currency respectively held by tho bank for each day from the 1st Feb'y to 1st July, the dates between which the law required the assessment to be made. The amounts fluctuate in "greenbacks" between $1,535,000 and $762,000, and in national currency from about $400,000 and $85,000. There was on hand June 30th, $762,000 in "greenbacks," and $158,000 in national currency, making total $920,000.

It is conceded by both parties that whatever part of the capital of the bank was invested in United States stocks, bonds and currency, is by the laws of the United States, exempt from taxation.

The bank filed an application for a re-hearing. The application and the brief in support of it, will be found at page 23 of the Record. A re-hearing was granted. An additional statement of facts was filed by consent, which we copy:

Statement of the affairs of the New Orleans Canal and Banking Co, on Monday, 28th June, 1875.

Real estate	$ 182,516.85
Stocks	8,228.35
Taxes paid	14,431.65
Suspended debts	54,740.80
Foreign and domestic bill protested	26,949.73
Notes and bills discounted	1,833,146.41
Foreign and domestic exchange	919,996.51
Interest due on loans on call	3,349 47
City 7 per cent. gold bonds—$50,000	25,750.00

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CASH ITEMS.

Gold	$ 32,419.80	
Legal tenders	974,777.17	
Checks sent to Clearing House	172,409.73	$1,179,606.70
		$4,248,716.47
Capital stock	$1,000,000.00	
Profit and loss	99,694.00	
Dividends unpaid	46,556.00	
Individual depositors	3,044,957.19	
Foreign banks and bankers	48,061.78	
Circulation	9,447.50	$4,248,716.47

We accept the above as a correct statement of the average condition of the bank during 1875, and agree that it shall be considered by the Court in deciding the case.

(Signed) SAM. P. BLANC,
Attorney for City of New Orleans.

(Signed) J. & W. S. FINNEY,
Att'ys for N. O. Canal and Banking Co

The case was re-argued and re-submitted. The final opinion was delivered by Judge Egan, and will be found at page 32.

By the 20th clause of the 12th section of Act No. 7, of the acts of the extra session of 1870, p. 37, the council is authorized, and by the 18th section, p. 38, it is required annually "to levy an equal and uniform tax * * * upon all property, real and personal, in said city."

The 14th section defines the term personal property: "The term personal property shall be construed "to include all household furniture, moneys, goods, "capital, etc."

The tax in question is in terms a tax on property, and is levied by an ordinance of the City Council, p. 12, in the following words:

Ordinance No. 3367.

MAYORALITY OF NEW ORLEANS, CITY HALL, }
January 26th, 1876. }

(No. 3367, Administration Series.)

An Ordinance levying City Tax for the year 1876.

Be it ordained by the council of the city of New Orleans, that the following taxes be, and are hereby levied and assessed for the year 1876, *on all taxable property* within the limits of the city of New Orlean, according to the assessment of said year, to-wit:

City debt tax: For redemption and payment of interest on bonded debt, twenty-six cents on every one hundred dollars of valuation.

16 Police tax: Forty-two cents on every one hundred dollars of valuation.

School tax: Twenty-five cents on every one hundred dollars of valuation.

Current city expense tax: Fifty-seven cents on every one hundred dollars of valuation

Total tax, one and one-half per cent. on an assessment of $119,045,515.

Adopted by the council of the city of New Orleans, January 25th, 1876, the veto of the mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Burke, Landry, Pilsbury —5.

Nays: Bouny—1.

(Signed) J. H. HARDY, *Secretary*.

The tax is imposed on the capital as property. It is not pretended that it affects the capital of the bank otherwise than that of an individual.

We copy the tax bill:

Assessment Roll.

New Orleans Canal and Banking Company.

No. Bill.	Asst. Dist.	No. of Square	Description of R. E.	Where situated.	Capital.	Am'nt of tax.
928	5	171		Gravier and Camp sts.	$700,000 00	$10,500 00

Judge Egan copies the statement of the bank, made on the 28th of June, 1875, which is admitted to show the average condition of the bank during the year. He admits that United States treasury notes, National Bank and deposits are not taxable. See U. S. Revised Statutes, sections 3701 and 5413.

He accepts our theory that the capital of a bank, like that of a merchant, consists of the value of its assets after deducting the amount of its liabilities.

Upon these facts and findings, we respectfully submit that it is only necessary to work out a sum in simple addition and subtraction to see that the capital of the bank amounted to only $803,051 00.

We refer to the bank statement accepted as showing the average condition of the bank during the year 1875.

We will add up the assets and former liabilities and subtract the latter from the former. We exclude real estate from the assets, because that is taxed as real estate separately, at the same rate, one and a half per centum, which is claimed on capital. We also exclude from the assets "taxes paid," for they evidently are not assets. We exclude from liabilities the amount due the stockholders by the

bank for stock paid up, which we admit, for the purposes of this argument, is not to be treated as a liability, and we have the following result:

Stock		$8,228.35
Suspended debts		54,740.80
Foreign and domestic bill protested		26,949.73
Notes and bills discounted		1,833,146.41
Foreign and domestic exchange		919,996.51
Interest due on loans on call		3,349.47
City 7 per cent. gold bonds—$50,000		25,750.00
CASH ITEMS.		
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		$4,051,767.47
Profit and loss	$ 99,694.00	
Dividends unpaid	46,556.00	
Individual depositors	3,044,957.19	
Foreign banks and bankers	48,061.78	
Circulation	9,447.50	$3,248,716.47
Subtract liabilities from assets and the balance is		$803,051.00

We have included among the assets at their full nominal value $54,740 80 of suspended debts, and $26,949 73 of protested bills. The assessors fixed our capital at $700,000 00. We never had less than $762,000 00 in United States treasury notes and $158,000 00 in National currency, making in non-taxable money $920,000 00, an amount largely in excess of our capital either as assessed or in actual existence.

ASSIGNMENT OF ERRORS.

1. The court, admitting that the bank is not taxable on its deposits or its non-taxable money, concludes that it is not exempt on both added together

(which we never claimed), and that it is our duty to apply our money to the payment of our deposits. This it does and exhausts in this way our non-taxable money, and we have none left for exemption. In this manner the Court ciphers the bank out of the benefit of the acts of Congress. We submit that in the application and construction of the acts of Congress, whenever arithmetic is necessary, we are entitled to correct arithmetic.

2. The Court erred in establishing an imaginary set-off between the bank's liabilities and its non-taxable money, by which the latter is made to disappear, and thus the bank has nothing non-taxable left. In this arbitrary manner we are deprived of the benefit of the acts of Congress. We submit that a set-off between the bank's assets and liabilities is unknown to law, and cannot be allowed to evade the laws of the United States.

3. The Court erred in holding, as we understand it to have done, that in order to entitle the bank to the exemption claimed, "it is necessary that the entire "capital of the bank should be invested in green-"backs, and nothing else, and that it should have "no other means of redeeming its deposits." This we submit, is a misconstruction and false application of the acts of Congress.

4. Upon the facts admitted, it is evident that we have no capital which is not exempt by the laws of the United States, and the Court erred in refusing us the benefit of the exemption.

ARGUMENT.

We understand that our learned opponent proposes to question the jurisdiction of your Honors to decide this cause. Upon what ground we are unable to conjecture. We claim an immunity, an exemption from State and municipal taxation, and the decision of the State Courts is adverse to our contention. Is not the Federal question raised? If we are entitled to the exemption under the laws of the United States, does it make any difference that the vicious reasoning, by which the Court reached its conclusion, was of an arithmetical character, rather than such as is ordinarily used in courts of justice. Furthermore, when the Court decides that the bank is not entitled to exemption on its non-taxable money, no matter how much in amount it exceeds its capital, provided it has other assets subject to taxation, it contravenes the letter and plain intent of the acts of Congress, and renders them a dead letter.

In this process, by which the non-taxable money is made to dissappear, the Court assumes an imaginary state of facts, and applies a novel legal principle. The non-taxable money is applied to the payment *pro tanto* of the deposits; but the bank goes through this process daily, and has always new deposits and a new supply of non-taxable money. Instead of being exhausted, the fund is constantly replenished. No such exhaustion of the money of the bank can take place, unless its movement is stopped, and it is put in liquidation. As this has not

taken place, and it is not pretended that it has, the statement of facts shows the contrary, it is unnecessary, to consider the legal result in reference to the present question.

If the bank was put in liquidation, what would be the result. The bank would have the right, and no Court could deny it, of using such assets in payment of its deposits, as it found most to its advantage. And if it could save any taxes by applying the proceeds of its taxable property in preference to the non-taxable, there could be no complaint.

If this theory of liquidation is to be carried out, why stop just at the point of payment of the depositors, why not proceed a little further and convert into money all the convertible assets of the bank, pay off all its creditors and divide the balance among the stockholders. Then there would be nothing to tax.

The Court establishes a set-off between the bank's money and its deposits, by which the former is extinguished. We never heard before of any such set-off. Mutual debts and mutual credits are set-off; but the set-off, spoken of here, is a new invention purely fanciful, and applied to a state of facts purely imaginary.

We proceed to the third error assigned :

The Court below maintained that to entitle the bank to the exemption claimed, "it is necessary that "the entire capital of the bank should be invested "in greenbacks, and nothing else, and that it should

" have no other means of redeeming its deposits." The latter part of the sentence goes back to the idea, we have already combatted, of applying the non-taxable assets of the bank to the payment of its debts, so as to have the rest subject to the tax. According to the theory of the Court, it is evident that if the bank held all the securities and obligations outstanding against the government, in case it owed an equal and larger amount of debt, and had other assets, it would still be liable to this tax. We submit that this interpolates conditions not to be found in the acts of Congress.

The capital of a bank, like that of a merchant, consists of the value of its assets after deducting the amount of its liabilities.

In this sense your Honors decided the case of Bailey vs. Clark, 21 Wallace, 284. "There is no " difference in the business of banking as conducted " by individuals, from the business as conducted by " corporations, which would warrant any different " meaning to be given to the term capital in the " two cases, nor can any good reason be stated why " a distinction should be made between banking " corporations and individual bankers in this re- " spect." Ibid. 287.

A merchant puts $100,000 in his business. By an investment of this money and the use of his credit, he buys a stock of goods far exceeding that amount in value. He also sells goods to his customers and takes their notes, or charges them on his

books, for what he sells. He accumulates a large portfolio, and holds a large amount of book debts. These are all assets and added to his stock of goods, which he keeps constantly replenished, exceed the capital which he originally put in perhaps five-fold or more. In the meantime, in the movement of his business, he has given notes and bills of exchange and made book debts, and has created liabilities to a large amount. What is his capital? It is evidently *the excess* of the value of his assets over the amount of his liabilities. He has not added to his capital by buying goods. For every dollar's worth he buys, he gives a corresponding value. Nor does he add to his capital by selling goods to ever so large an amount, except to the extent of the profit which he makes on the resale. He merely exchanges one value for another—the goods for the price. Nor does he add to his capital by a mere change in the investment of his means, except to the extent of the profit in the operation.

So the bank does not increase its capital by receiving money on deposit. For every dollar received a corresponding indebtedness is created. Nor by the accumulation of exchange, commercial paper, bonds, or other securities, except to the extent of the profit of the operation; because for every value received a corresponding value has been given. By loaning money, a bank may make interest or lose principal and interest. By purchasing other securi-

ties, it may make interest and profit, or lose even to the extent of the investment.

It is argued that it does not appear that our capital was invested in money. We do not perceive how we can prove it except by showing, as we have shown, that we always have that much money on hand. It was not intended by the law, which exempts from taxation these kinds of currency, that the notes should be labelled and put away, and marked or denominated capital; for the same law which exempts from taxation has careful provisions to prevent such currency from being hoarded or taken out of circulation, and also to drive out of circulation the issues of all State banks. Both of these kinds of currency are highly accredited by the provisions of the acts of Congress. The treasury notes are made a legal tender for all debts and obligations, public or private, except duties on imports and interest on the public debt. 12 Statutes at Large, 345.

The national currency is made a legal tender for all debts due by the Government, except duties on imports, interests on the public debt, and the obligation to redeem the currency of the National banks. 13 Statutes at Large, p. 106, section 23.

The Government guarantees the redemption of this kind of currency, and is secured in its guarantee by a pledge of its own bonds.

The issues of other banks are driven out of circulation by a tax which amounts to a prohibition

and which was evidently intended as a prohibition. It has so operated. 13 Statutes at Large, p. 484, section 6.

The law expressly exempts from taxation these kinds of currency, and it intends that they shall circulate as money, and it did not intend that they shall be exempt from taxation only on condition that they ceased to perform the functions for which they were created, viz,, that of constituting a circulating medium.

The subject has been considered by your Honors in a number of cases, and we believe the very question has been decided in our favor.

In the case of the Bank of Commerce vs. New York, 2 Black, 620, it appeared that the capital of the Bank of Commerce amounted to $9,148,480.00, of which $392,214.83 was invested in real estate, and the balance in bonds, stocks and securities of the United States, which the bank claimed to be exempt from taxation. The city claimed a tax on all the capital of the bank, less what was invested in real estate, and $20,000 nndisputed exemption.

The law of New York taxed the capital of the bank according to its value. It was held that such portion as was invested in stocks, bonds or other securities of the United States, was not liable to taxation by the State.

In the case of the Bank of New York vs. Supervisors, 7 Wallace, 26, the question came up as to the exemption of the bank from taxation on so much of

its capital as was invested in treasury notes or greenbacks, as they are vulgarly called, and the Court maintained the exemption. This case depended on the state of legislation which existed prior to the act of 1864, which expressly exempted treasury notes and national currency. There had been statutes passed during the early part of the war which exempted government securities, but the Court regarded these as merely declaratory of the law, as it stood previously. See also, 2 Wall. 200.

In the case of the Bank of Commerce vs. New York, 2 Black, 620, it appears from the report of the case, the bank had a capital of over $9,000,000.00, of which $8,580,000.00 was invested in securities of the United States, and $372,000.00 in real estate. We presume that a bank, which so large a capital, must have had a large amount of other assets, and owed a large amount of deposits and other liabilities. It does not appear to have occurred to your Honors that its government securities must be applied to the payment of its debts, so as to leave only taxable property.

In the case of the Bank of New York, the bank claimed exemption on the amount of its greenbacks. It was allowed, and we presume the same remark is applicable to that case.

In the Bank tax case, reported 2 Wallace, 200, it is stated by the reporter, that between 20 and 30 New York banks were plaintiffs in error. After the decision in 2 Black, the Legislature of New York en-

deavored to evade it by a law enacting, "*that* all "banks, banking associations, etc., shall be liable to "taxation on a *valuation equal to the amount of their* "*capital stock paid in or secured to be paid in, and* "*their surplus, earnings*," *etc.*

As all banks do business in pretty much the same way, and can only earn dividends by so doing, we presume these 20 or 30 banks received a large amount of deposits, and used it in discounting commercial paper, buying exchange and ordinary banking operations They must have had a large amount of assets besides their Government securities. But it does not appear that the non-taxable assets were made to disappear by the novel device under which the Canal Bank suffered.

The very question was decided in the case of the City of Chicago vs. Lant et al., 52 Ill. 414.

We copy the statement of facts:

"The complainants formed a co-partnership on "the 1st of December, 1866, with a capital stock "of $50,000, for the purpose of doing business as "private bankers in the city of Chicago, making the "purchase and sale of the various securities of the "United States a principal feature of their business.

"Immediately after the formation of the part-"nership the complainants invested their said capi-"tal in various bonds and negotiable securities of "the United States, but only for the purpose of re-"selling the same, and thus making a profit.

"From the formation of the partnership down to "the present time, the complainants have constantly "owned and held $50,000 and upwards of the "bonds and negotiable securities of the United "States, although the identity of the same was "constantly changing by daily sales and new pur- "chases by said complainants.

"The complainants, in the conduct of their "business, receive deposits, which, since the first "day of January, 1867, have constantly exceeded "$100,000, and have made loans to their custom- "ers since that date which have at all times ex- "ceeded $100,000, July 27th, 1869."

We now quote the head note of the decision:

"Several persons associated together as partners "and doing business as private bankers, may invest "their capital in bonds and negotiable securities of "the United States, for the sole purpose of re-sell- "the same, and thus making a profit, and re-pur- "chasing like securities to be sold in like manner, "such capital being kept constantly absorbed in "some form of such securities, and still be entitled "to that immunity from State and municipal taxa- "tion which would be accorded to an individual "holding the same securities."

The Court in its opinion refers to the cases of The People vs. Bradley, 39 Ill. 130, and McVeagh vs. City of Chicago, 49 Ill. 318, and remarks, that in those cases it was decided that bank stocks invested in Government bonds are liable to taxation. But

in those cases the tax was levied upon the shares of the stockholders.

We copy from the head note of the case of the the Home Mutual Insurance Co. vs. City of New Orleans, 20 A. 116:

"That portion of the capital of the Home Mu-
" tual Insurance Company which is invested in
" bonds and stocks, exempted from taxation by
" statute, is not subject to taxation as the capital
" of the company.

"Capital composed of property, not subject to
" taxation, cannot be taxed by calling it nominal
" capital.

"The principle of uniformity and equality in tax-
" ation, required by the Constitution of Louisiana,
" would be violated by assessing the nominal capital
" of a company or corporation liable to be taxed on
" the amount of capital paid in, or to be paid in."

We submit, that upon the statement of facts, the bank is entitled to the exemption claimed under the acts of Congress, and the law, as settled by this Court, and that the judgment should be reversed, and we pray relief accordingly.

Respectfully submitted,

JNO. FINNEY,

Att'y and of Counsel for Plaintiff in Error.